

**WARNOCK MACKINLAY LAW PLLC**

7135 East Camelback Road, Suite F240

Scottsdale, Arizona 85251

Telephone: (602) 381-6529

Fax: (602) 903-2411

Nathaniel B. Preston, State Bar No. 030551

[Npreston@warnocklaw.com](mailto:Npreston@warnocklaw.com)

Christian Pedersen, State Bar No. 035898

[cpedersen@warnocklaw.com](mailto:cpedersen@warnocklaw.com)

Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Victor Ross, an individual,

Case No.

Plaintiff,

vs.

**AMENDED VERIFIED COMPLAINT**

(Negligence)

United States of America; Department of  
Defense (“DOD”) and its subsidiary  
Department of the Air Force (“USAF”),  
Davis-Monthan Air Force Base, John Doe  
1 (“JD1”) the unknown gate/barrier  
operator in his individual capacity as agent  
of the USAF, John Does I-X, Jane Does I-  
X, ABC Corporations I-X,

Defendant.

Victor Ross, an individual, sues the United States of America (“United States” or  
“Defendant”) for compensatory damages under 28 U.S.C. §§ 2671 *et seq.* and 2674, the Federal  
Court Tort Claims Act, and Arizona state law.

**JURISDICTION**

1. This action arises under 28 U.S.C. §2674 and Arizona state law. This Court has

1 jurisdiction under 28 U.S.C. §1343(a)(3) and §1346(b)(1). This Court has supplemental  
2 jurisdiction under 28 U.S.C. §1367 to adjudicate claims arising under state law. The Federal Tort  
3 Claims Act, pursuant to 28 U.S.C. §§ 1346(b) and 2671-2680, authorizes monetary recovery for  
4 damages such as property damage, personal injury, and other losses in cases where the damages  
5 occurred as a result of the “negligent or wrongful act or omission of any employee of the  
6 Government while acting within the scope of his office or employment, under circumstances  
7 where the United States, if a private person, would be liable to the claimant in accordance with  
8 the law of the place where the act or omission occurred.” 28 U.S.C. § 1326(b).  
9  
10

11  
12 2. Venue is proper within the District of Arizona pursuant to 28 U.S.C. §1391,  
13 because the events complained of herein occurred within the District of Arizona in Pima County,  
14 Arizona in an incident involving an agent of the United States, a security personnel for the  
15 Department of the Air Force.  
16

### 17 **PARTIES**

18 3. Victor Ross (“Victor” or “Plaintiff”) is, and at all times relevant hereto was, an  
19 individual residing in Pima County, Arizona.  
20

21 4. Defendant United States has the Department of Defense (“DOD”) and its  
22 subsidiary Department of the Air Force (“USAF”), and an unknown gate/barrier operator (“John  
23 Doe 1”, or “JD1”), in his individual capacity as agent of the USAF as its constituent agents and  
24 agencies. At all relevant times, Defendant United States employed JD1 as an agent and official  
25 of the USAF, and is liable for his torts committed while in the course and scope of employment  
26 with the USAF.  
27  
28

1           5.       Agencies of the United States, DOD and its subsidiary agency USAF, employed  
2 JD1 as an agent and official at all relevant times. DOD and USAF were responsible for  
3 supervising and training JD1 in his duties relating to the operation of the security gate/barrier at  
4 the Davis-Monthan Air Force Base, including Plaintiff.

6           6.       United States' agent JD1 is, and at all times relevant hereto was, an employee of  
7 DOD, assigned to USAF. On information and belief, JDI was assigned to the Security Forces  
8 personnel, working within Pima County, Arizona, and in such capacity, was acting within the  
9 course and scope of his employment with DOD and USAF at all relevant times.

11           7.       United States' agent USAF owned, installed, operated, maintained, repaired and  
12 inspected a security gate at the Davis-Monthan AFB. JD1 was authorized and/or entrusted to use  
13 said gate/barrier such that the United States is liable for JD1's acts and omissions under  
14 principles of vicarious liability, for those torts committed while JD1 was operating the  
15 gate/barrier under the course and scope of his employment duties as an agent of the USAF.

17           8.       At all relevant times, agents of Defendant have committed the acts, caused others  
18 to commit the acts, or permitted others to commit the acts alleged herein.

20  
21                   **COMPLIANCE WITH GOVERNMENT CLAIM STATUTE**

22           9.       Plaintiff timely complied with the Federal Tort Claims Act by filing a Federal Tort  
23 Claim against United States' agency USAF in a Form 95 Notice of Claim originally on October  
24 25, 2021. USAF, who acknowledged the Notices of Claim, has agreed that the deadline for  
25 Plaintiff to file a Complaint on these claims would be no later than six months following the July  
26 26, 2022 letter of claim denial from counsel for USAF.

**GENERAL ALLEGATIONS**

10. On February 1, 2020, Plaintiff Victor, a contractor for a business called Climatec, was invited to attend a business meeting held at the Davis-Monthan AFB. Every visitor to the base must pass through a hydraulic vehicle barrier in order to gain access to the base.

11. Victor was driving his vehicle, when he was signaled to enter the base.

12. As he was passing through the security gate, and directly over the hydraulic vehicle barrier, JD1 negligently raised the barrier, causing Victor's vehicle to rise about 3 feet in the air, and then suddenly drop to the ground. Plaintiff was properly restrained at the time of the collision.

13. Having no time to react or avoid JD1 raising the barrier, Plaintiff was unable to take any action to avoid his vehicle being lifted and dropped by the barrier.

14. As a direct and proximate result of Kramer's negligence, Plaintiff sustained serious bodily injuries, some of them permanent in nature, and required past medical treatment and will require future medical care for his injuries, including the possibility of steroid epidural injections and possibly spinal surgery.

15. Plaintiff's injuries sustained in the collision at issue include, but are not limited to:

- **Posttraumatic headaches**
- **L3-4 disc herniation**
- **L4-5 disc herniation**
- **L5-S1 disc herniation causing nerve pain and irritation**
- **Nerve Root Compress in Lumbosacral Spine**
- **Abnormal Curvature in Lumbar Region**
- **Severe Nerve Pain in Lumbar Region Radiating into Lower Extremities**
- **Sprained / strained muscles and ligaments of lower back**
- **Lower Back Pain**
- **Exacerbated Degeneration of Spinal Canal in Lumbar Region**

- **Insomnia**
- **Fatigue**
- **Anxiety**
- **Depression**
- **Extreme stress**

16. Plaintiff's current past medical expenses for treatment for injuries sustained in the collision at issue have totaled \$42,644.39, which special damages do not take into account the general damages claimed by Plaintiff, nor future medical care.

17. Following the collision, Defendant United States agency USAF failed to compensate Victor for his property damage losses. This has presented a huge financial hardship and inconvenience for Victor and his family. His repair costs for his vehicle were \$9,618.98.

18. Plaintiff did absolutely nothing wrong, was wholly unable to avoid the collision, and acted as any reasonable and prudent person would have acted under similar circumstances. As a result of JD1's negligent act, Plaintiff has sustained injury and incurred damages. Defendant is liable to Plaintiff for all of his damages.

**FIRST CAUSE OF ACTION**  
**Negligence**

19. Plaintiff incorporates by reference each allegation set forth above.

20. JD1, agent of Defendant United States, had a duty to operate the vehicle gate/barrier he was operating in a reasonably safe and prudent manner to protect Plaintiff and others against unreasonable risk of harm or injury.

21. JD1 breached that duty by failing to pay attention to Victor and the position of his vehicle, causing Victor's vehicle to rise and then drop suddenly.

1       22. Plaintiff Victor did absolutely nothing wrong, and there was no evasive action he  
2 could have taken to avoid this incident.

3  
4       23. As a direct and proximate result of JD1's negligence, Plaintiff suffered  
5 considerable harm, including but not limited to past and future medical expenses, property  
6 damage, loss of use, economic losses, pain and suffering, loss of enjoyment of life, and mental  
7 distress.  
8

9       24. Defendant United States is vicariously and jointly and severally liable to Plaintiff  
10 for damages stemming from JD1's negligence, because he was employed by Defendant and was  
11 working within the course and scope of his employment as an agent of USAF when he caused  
12 Victor's vehicle to rise and then drop suddenly, and Defendant's agencies negligently permitted  
13 him to operating the gate/barrier. They further failed to properly train and supervise JD1 in  
14 operational safety, in order to avoid such incidents.  
15  
16

17                               **DAMAGES**

18       25. As a direct and proximate result of JD1's negligence, Plaintiff suffered  
19 considerable harm, including but not limited to past and future medical expenses, property  
20 damage, loss of use, economic losses, pain and suffering, loss of enjoyment of life, and mental  
21 distress.  
22

23                               **RELIEF**

24  
25       **WHEREFORE**, Plaintiff prays for judgment and order against Defendant as to each and  
26 every cause of action as follows:  
27

- 28               a. General damages in an amount an amount to be determined at trial;

- b. Special damages in an amount an amount to be determined at trial;
- c. Such other and further relief as the Court deems just and proper.

DATED this 13th day of December, 2022.

**WARNOCK MACKINLAY LAW PLLC**

By: /s/Christian Pedersen  
Christian Pedersen  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on December 14th 2022, I electronically transmitted the above document to the Clerk's Office using the CM/ECF System for filing.

I further certify that I caused a copy of the foregoing **Verified** Complaint to be sent by **certified** mail to the following addresses:

Attorney General William Barr  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Department of the Air Force  
Air Force Claims/Tort Litigation Dept.  
1500 E. Perimeter Road, Suite 1700  
Joint Base Andrews, MD 20762

355 WG/JA  
3405 S. Fifth Street  
Davis-Monthan AFB, AZ 85707

I further certify that I caused a copy of the foregoing Verified Complaint to be served via personal service by a process server on the following persons and entities:

Michael Bailey, Esq.  
**U.S. Attorney's Office**  
Two Renaissance Square  
40 N. Central Ave., Suite 1800  
Phoenix, AZ 85004

By: /s/ Haila Boyer